

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DON MARTIN, #184335,

Plaintiff,

V.

LOUIS BOYD, et al.,

Defendants.

CIVIL ACTION NO. 2:05-CV-982-D
[WO]

RECOMMENDATION OF THE MAGISTRATE JUDGE

Don Martin, a state inmate, filed this 42 U.S.C. § 1983 action on October 13, 2005. Subsequently, and prior to the defendants filing their special report, Martin filed a document in which he requests that the court “dismiss plaintiff’s 42 U.S.C. § 1983 complaint without prejudice, and without having to pay the cost of filing fees . . .” *Court Doc. No. 10* at 1. The court therefore construes this document to contain a motion to dismiss.

Upon consideration of Martin’s motion to dismiss, the court concludes that the motion is due to be granted. Furthermore, since the defendants have filed no response addressing the claims raised in the instant complaint, the court concludes that this case should be dismissed without prejudice. *See* Rule 41(a)(1), *Federal Rules of Civil Procedure*.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that Martin's motion to dismiss be granted and that this case be dismissed without prejudice. It is further

ORDERED that on or before November 28, 2005 the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general

objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 15TH day of November, 2005.

/s/ Delores R. Boyd
DELORES R. BOYD
UNITED STATES MAGISTRATE JUDGE